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Action by Matilda Rose against S. C. Agee and others. To review judgment for defendants, except as to the portion of the land disclaimed by them, plaintiff brings error. Affirmed.

Haden & Haden, of Fincastle, for plaintiff in error.

C. M. Lunsford, of Fincastle, and *Wm. R. Allen*, of Buchanan, for defendants in error.

ROBERTSON *v.* BERTHA MINERAL CO. et al.

Sept. 16, 1920.

[104 S. E. 832.]

1. Easements (§ 61 (2)*)—Unlawful Use May Be Enjoined.—The unlawful use of an easement may be enjoined.

[Ed. Note.—For other cases, see 4 Va.-W. Va. Enc. Dig. 867.]

2. Injunction (§ 21*)—Remedy Not Waived by Agreement of Parties.—Where complainant, the owner of the servient tenement objected to the repair of a railway over his premises and it was agreed that application for injunction should not then be made but that the work should be allowed to proceed and in event amicable settlement could not be reached complainant should be entitled to his remedies at law such agreement will not prevent the later issuance of an injunction.

[Ed. Note.—For other cases, see 4 Va.-W. Va. Enc. Dig. 867.]

3. Railroads (§ 82 (2)*)—Landowner Not Estopped from Denying Right of Way Easement.—Where a railway originally constructed as a mining road over complainant's property had not been used for a number of years at the time complainant bought the servient tenement and the road had fallen into bad repair so that the physical condition indicated an actual abandonment, complainant was not estopped from denying the right of the owner of the easement to resume operations.

[Ed. Note.—For other cases, see 4 Va.-W. Va. Enc. Dig. 863, et seq.]

4. Railroads (§ 73 (1)*)—Right to Use Way for Purpose Not Contemplated by Grant Dependent on Prescription.—To entitle the owner of an easement for a railroad right of way to use the same for a purpose not contemplated by the original grant, it is necessary that a prescriptive right for the new use be acquired.

[Ed. Note.—For other cases, see 4 Va.-W. Va. Enc. Dig. 866, et seq.]

5. Railroads (§ 72 (7)*)—Void Reverter Clause in Deed May Be Considered in Determining Purpose of Conveyance.—Where a grant of a railroad right of way provides that it shall revert whenever the

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

railway ceases to be used for the purposes aforesaid for the space of "——," the effect of the reverter clause as an express condition subsequent is eliminated, and the clause may be considered for the purpose of determining the purpose of the grant.

[Ed. Note.—For other cases, see 11 Va.-W. Va. Enc. Dig. 544, et seq.]

6. Railroads (§ 73 (2)*)—Use of Right of Way Restricted.—A grant to a mining company having the incidental power to build railroads, of a right of way for a railroad to connect its coal fields with a trunk line railroad, *held* limited to a right of way for a railroad for use in connection with the primary purposes of the mining company, notwithstanding a provision for a depot and site for use of the grantor.

[Ed. Note.—For other cases, see 11 Va.-W. Va. Enc. Dig. 543, et seq.]

7. Railroads (§ 73 (2)*)—Use of Way Confined to Purposes of Grant.—The use of a way must be confined to the purposes of the grant, and a railroad right of way granted to a coal company for transportation of its products cannot be used for another purpose.

[Ed. Note.—For other cases, see 11 Va.-W. Va. Enc. Dig. 543, et seq.]

8. Railroads (§ 72 (8)*)—Bill Held Not to Show Use of Right of Way for Other than Mining Purposes.—A bill to enjoin the grantee of a mining company's easement for a right of way for a railroad, from using it for transportation other than in connection with the mining project, *held* not open to attack on the ground that it showed that the easement was used for other than mining purposes for a period of more than 15 years prior to suit, the bill showing that for at least 12 years before suit was brought the railroad had not been used for any purpose, and that when used for other than mining purposes was resumed, it was promptly challenged.

[Ed. Note.—For other cases, see 11 Va.-W. Va. Enc. Dig. 543, et seq.]

9. Railroads (§ 82 (1)*)—Right of Way Easement Not Terminated by Expiration of Charter.—Where a mining company chartered by Acts of 1877-78, c. 45, by virtue of Act Feb. 10, 1894 (Laws 1893-94, c. 204), and a deed pursuant thereto, conveyed its rights to defendant, the mining company's interest in an easement for a railroad right of way was not lost on the theory of the termination of its charter rights under Code 1873, c. 57, §§ 36 and 38, declaring that if any mining company shall suspend operations for two years its corporate rights shall cease and limiting the charters of such companies to 30 years; there being nothing to show that the mining

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company suspended operations for two years prior to conveyance, and its rights having been conveyed before expiration.

[Ed. Note.—For other cases, see 11 Va.-W. Va. Enc. Dig. 543, et seq.]

Appeal from Circuit Court, Pulaski County.

Bill by W. T. Robertson against the Bertha Mineral Company and another. From a decree sustaining a demurrer to the bill, complainant appeals. Reversed.

F. W. Morton, of Pulaski, for appellant.

H. C. Gilmer and *John S. Draper, Jr.*, both of Pulaski, for appellees.

RIGGOLD *v.* RIGGOLD.

Nov. 18, 1920.

[104 S. E. 836.]

1. **Divorce (§ 27 (18)*)—Conduct of Husband Held to Constitute Cruelty Justifying Divorce from Bed and Board.**—The acts of a husband in refusing without justification to allow his wife to occupy his room and bed, and in subjecting her to humiliating treatment because of an act of vulgarity in her childhood, and in permitting his mother and sisters to defame and humiliate her, *held* to constitute cruelty entitling her to a divorce from bed and board, though he supported her while she remained in his house and held out the assurance that some time when she had been sufficiently punished she might again be recognized as his wife.

[Ed. Note.—For other cases, see 4 Va.-W. Va. Enc. Dig. 737.]

2. **Divorce (§ 27 (3)*)—Violence and Apprehension of Bodily Hurt Not Essential Elements of Cruelty.**—Violence and apprehension of bodily hurt are not indispensable ingredients in the defense of cruelty as a ground for divorce.

[Ed. Note.—For other cases, see 4 Va.-W. Va. Enc. Dig. 737.]

3. **Divorce (§ 37 (20)*)—Husband's Conduct Held Desertion Justifying Divorce from Bed and Board.**—The conduct of a husband in withdrawing from the marriage bed, declining to allow the wife to keep house for him, and effectually deposing her as his wife; because of an indiscretion in her childhood, *held* desertion entitling her to a divorce from bed and board, though for a time he supported her and paid her bills.

[Ed. Note.—For other cases, see 4 Va.-W. Va. Enc. Dig. 738.]

4. **Divorce (§ 37 (3)*)—Desertion Held Permanent Notwithstanding Husband's Intimation that He Might Some Time again Recog-**

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.